SAMPLE PROJECT MANAGEMENT SERVICES AGREEMENT
between the Mason County Public Transportation Benefit Area Authority and
_____

THIS PROJECT MANAGEMENT SERVICES AGREEMENT is made and entered into on this ___ day of _____, 2012, by and between the Mason County Public Transportation Benefit Area Authority, a Washington municipal corporation and public transportation benefit area operating under Chapter 36. 57A RCW (hereinafter "MTA"), and _____, organized under the laws of the State of _____, located and doing business at _____address, _____ phone number, and _____email (hereinafter the "Consultant").

1. DESCRIPTION AND SCOPE OF WORK

Consultant shall perform the following services for MTA:

To act and function in the capacity of the MTA's Project Manager on the Transit-Community Center Renovation Project (hereinafter "Project"), which is comprised of tasks related to the design and construction of said facility to be located on MTA-owned real property situated at 601 West Franklin Street, Shelton, Mason County, Washington and transit-related frontage improvements in coordination with the City of Shelton, Washington. With guidance from MTA, Consultant shall supervise and manage all aspects of the Project and shall regularly communicate and coordinate Project activities with MTA and MTA's consultants and professionals on the Project, including, but not limited to, representatives of the contracted architect, and the engineering firms retained, as well as the construction contractor ultimately selected by MTA to renovate the facility. Project management services shall also include the following work and tasks pertaining to the Project:

A. With the MTA, develop project budget and oversee payments and financial record keeping and reporting; and

B. Attend and participate in design team/review, public/community, bid/construction, close-out, and MTA Board and committee meetings and study sessions as necessary or as directed by the MTA General Manager and make recommendations as appropriate; and

C. Ensure National and State Environmental Policy Acts (NEPA & SEPA), public and community participation/awareness, value engineering, peer review, quality assurance, and risk assessment compliance consistent with the applicable provisions of any city, county, state or federal law, rule or regulation and of any grant secured by MTA; and

D. Ensure that the other consultants and professionals on the Project and the construction contractor selected by MTA are on task, meeting required deadlines and timetables, timely and fully performing and complying with their contractual obligations and duties, and staying within the MTA approved budget parameters; and

E. Prepare and implement all project management plans, policies, procedures, and protocols and all NEPA and SEPA documents required by the applicable terms and provisions of any local, state or federal laws, regulations, and/or grants; and

F. Manage and administer all phases of the Project, including the design, bidding, construction, and closeout phases, and be physically present on the construction site once construction activities begin as necessary to adequately perform the duties of the Project Manager and/or as otherwise directed by the MTA General Manager; and

G. Perform customary Clerk of the Works functions and supervise the contracted Work and activities of MTA's other consultants and professionals on the Project, as well as the construction contractor ultimately selected by MTA, and notify the MTA General Manager of any material defaults on or deviations from the contract requirements; and

H. Prepare and provide to the MTA written status reports on a monthly basis or on a more or less frequent basis as directed by the MTA General Manager, which reports shall include project status information, default/deviation information, and any other information requested by the MTA General Manager. Prepare and submit project final completion report to MTA and the Board; and

I. Ensure that the MTA General Manager is copied on all written correspondence sent by the Consultant to any person or party in connection with the Project, including governmental agencies, third parties, consultants, and contractors; and

J. Develop and implement communication protocol for the project. Communicate with the media and the local community on the Project and its status and make public announcements regarding the Project after seeking and obtaining communication approval from the MTA General Manager; and

K. Develop and implement a comprehensive records management policy for the project. Keep and maintain accurate records and files pertaining to the Project at the MTA's Office in Shelton, Washington; and

L. Promptly respond to requests for information or guidance made by the MTA General Manager or his designee, the other consultants and professionals on the Project, and the construction contractor selected by MTA, and provide summary progress updates as requested by the MTA General Manager or his designee; and

M. Make recommendations to the MTA General Manager and Board, as directed, regarding Project management issues, including, but not limited to, budgetary, contract compliance, and land use issues; and

N. After obtaining the approval of the MTA General Manager, utilize subcontractors to perform any required project management tasks or activities beyond the scope of Consultant's expertise; and

O. Allow MTA representatives and representatives of state and federal agencies, including but not limited to the Washington State Auditor's Office, Washington State Department of Transportation (WSDOT), and the Federal Transit Administration (FTA), to inspect, copy and audit the Consultant's records pertaining to the Project; and

P. Maximize energy conservation through the identification and implementation of practical and measurable green building design, construction, operations and maintenance solutions; and

Q. Perform other tasks and duties related to the management of the Project, as directed by the MTA General Manager.

Consultant represents and agrees that the services furnished under this Agreement will be performed in accordance with generally accepted professional practices, all applicable local, state and federal laws, rules, and regulations, and all state and federal grant requirements and conditions tied to the federal funding of the Project, which are in effect at the time those services are performed.

2. COMPENSATION

2.1 The MTA shall pay the Consultant compensation for services rendered by him to MTA under this Agreement at the rate of $_____ per hour for actual work time and at the rate of $_____ per hour for required travel time. The compensation to be paid by MTA to Consultant under this Agreement shall not exceed _____ ($_____) (hereinafter "maximum compensation amount"). The fees and costs of any subcontractors hired by Consultant and approved by the MTA General Manager shall be deemed part of the Consultants compensation and shall be fully paid by Consultant. MTA shall reimburse the Consultant for any approved subcontractors' fees and costs actually incurred by Consultant, with no mark up or add on compensation due to Consultant. The total amount to be paid by MTA for Consultants services and to reimburse Consultant for the fees and costs of the approved subcontractors shall not exceed the maximum compensation amount. MTA shall have no obligation to reimburse Consultant for any costs or expenses whatsoever incurred by Consultant in connection with the performance of his contractual duties hereunder unless said costs or expenses are pre-approved in writing by the MTA General Manager.

2.2 The Consultant shall submit monthly payment and reimbursement invoices to the MTA for work performed certified as being proper bills for work performed under this Agreement within five (5) days of the end of each calendar month. Properly submitted invoices will be paid within the month submitted. If the MTA objects to all or any portion of an invoice, it shall notify the Consultant and reserves the option

to only pay that portion of the invoice not in dispute. ln that event, the parties will immediately make every effort to settle the disputed portion.

3. INDEPENDENT CONTRACTOR

The parties intend that an independent contractor-client relationship will be created by this Agreement. No employee, agent; representative or subcontractor of the Consultant shall be or shall be deemed to be the employee, agent representative or sub-contractor of the MTA. None of the benefits provided by the MTA to its employees, including, but not limited to, compensation, insurance and unemployment insurance are available from the MTA to the employees, agents, representatives or subcontractors of the Consultant. On or before the effective date of this Agreement, Consultant shall file, maintain and/or open all necessary records with the Internal Revenue Service and the State of Washington, as the same are required by RCW 51.0S.195 in order to establish Consultants status as an independent contractor.

4. TERM

The term of this Agreement shall commence on _____, 2012 and shall terminate upon final project close-out, unless this Agreement is terminated sooner pursuant to paragraph 5 below. The parties understand and agree that final project close-out will occur after all construction, commissioning, and close-out activities on the Project have been fully completed.

5. TERMINATION

Either party may terminate this Agreement, with or without cause, upon providing the other party thirty (30) days written notice at its address set forth on the signature block of this Agreement. After termination, the MTA may take possession of all records and data within the Consultant's possession pertaining to this Project, which may be used by the MTA without restriction. If the MTA's use of Consultant's records or data is not related to this Project, it shall be without liability or legal exposure to the Consultant. Upon the termination of this Agreement, Consultant shall be entitled to receive compensation for all services rendered up to the date of termination and reimbursement for all costs and fees of approved subcontractors' incurred by Consultant up to the date of termination. The final payment shall be processed and paid like other monthly payments as provided in paragraph 2.2 above. The Consultant shall not be entitled to receive compensation or reimbursement for any services furnished by Consultant or his subcontractors after the date of termination.

6. DISCRIMINATION

In the hiring of employees for the performance of work under this Agreement or any subcontract, the Consultant, its subcontractors, or any person acting on behalf of the Consultant or subcontractor shall not, by reason of race, religion, color, sex, age, sexual orientation, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

7. INDEMNIFICATION

7.1 Consultant shall defend, indemnify and hold the MTA, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorney fees, arising out of or in connection with the Consultants performance of this Agreement, except for that portion of the injuries and damages caused by the MTA's negligence.

7.2 The MTA‘s inspection or acceptance of any of Consultants work when completed shall not be grounds to avoid any of these covenants of indemnification.

7.3 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Consultant and the MTA, its officers, officials, employees, agents and volunteers, the Consultant‘s liability hereunder shall be only to the extent of the Consultant‘s negligence.

7.4 IT IS FURTHER SPECIFICALLY AND EXPRESSLY UNDERSTOOD THAT THE lNDEMNIFICATION PROVIDED HEREIN CONSTITUTES THE CONSULTANT‘S WAIVER OF IMMUNITY UNDER INDUSTRIAL INSURANCE TITLE 51 RCW, SOLELY FOR THE PURPOSES OF THIS INDEMNIFICATION. THE PARTIES FURTHER ACKNOWLEDGE THAT THEY HAVE MUTUALLY NEGOTIATED THIS WAIVER.

7.5 The provisions of this section shall survive the expiration or termination of this Agreement.

8. INSURANCE

The Consultant shall procure and maintain for the duration of the Agreement, Professional Liability (Errors and Omissions) Insurance on an occurrence or per claims made basis against any claims that may arise from or in connection with the performance of the work hereunder by the Consultant, its employees,

agents or subcontractors. The cost of such insurance shall be borne by the Consultant. Consultant shall maintain limits on such insurance in the amount of $1,000,000.00 per claim or occurrence with an aggregate of $1,000,000.00. The coverage shall contain no special limitations on the scope of protection afforded to the MTA, its officers, officials, employees, agents, representatives or volunteers. Consultant's insurance coverage shall be primary as respects the MTA, its officers, officials, employees, agents, representatives or volunteers. Any deductibles or self-insured retentions must be declared to and approved by the MTA. At the option of the MTA, the insurer shall reduce or eliminate such deductibles and/or self-insured retentions shall not apply to the Consultants liability to MTA and shall be the sole responsibility of the Consultant. Any insurance maintained by MTA shall be in excess of the Consultants insurance and shall not contribute with it. Consultant agrees to provide the MTA with certificates of insurance evidencing the required coverage before execution of this Agreement. Each insurance policy required by this clause shall be written on a "per claim form" for professional liability insurance and endorsed to state that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after sixty (60) days prior written notice by certified mail, return receipt requested, has been given to MTA. MTA reserves the right to require complete, certified copies of all required insurance policies, at any time.

9. EXCHANGE OF INFORMATION

The MTA will provide its best efforts to provide reasonable accuracy of any information supplied by it to Consultant for the purpose of completion of the work under this Agreement. Each party agrees to promptly respond to written requests for information or guidance made by the other party and mutually cooperate with the other party in performing his or its duties or obligations under this Agreement.

10. OWNERSHIP AND USE OF RECORDS AND DOCUMENTS

Original documents, drawings, designs, reports, or any other records developed or created under this Agreement shall belong to and become the property of the MTA. All records submitted by the MTA to the Consultant will be safeguarded by the Consultant. Consultant shall make such data, documents, and files available to the MTA upon the MTA's request. The MTA's use or reuse of any of the documents, data and files created by Consultant for this Project by anyone other than Consultant on any other project shall be without liability or legal exposure to Consultant.

11. MTA'S RIGHT OF INSPECTION

Even though Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval

of the MTA and shall be subject to the MTA's general right of inspection and supervision to secure satisfactory completion.

12. WORK PERFORMIED AT CONSULTANTS RISK

Consultant shall take all necessary precautions and shall be responsible for the safety of its employees, agents, and subcontractors in the performance of the contract work and shall utilize all protection necessary for that purpose. All work shall be done at Consultants own risk, and Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held for use in connection with the work.

13. MISCELLANEOUS PROVISIONS

13.1 Non-Waiver of Breach

The failure of the MTA to insist upon strict performance of any of the covenants and agreements contained in this Agreement, or to exercise any option covered by this Agreement in one or more instances shall not be construed to be a waiver or relinquishment of those covenants, agreements or options, and the same shall be and remain in full force and effect.

13.2 Resolution of Disputes and Governing Law.

This Agreement shall be governed by and construed in accordance with the laws of the state of Washington. If the parties are unable to settle any dispute, difference or claim arising from the parties' performance of this Agreement, the exclusive means of resolving that dispute, difference or claim, shall only be by filing suit exclusively under the venue, rules and jurisdiction of the Superior Court of Washington for Mason County, Mason County, Washington, unless the parties agree in writing to an alternative dispute resolution process. Consultant hereby submits to the jurisdiction of the Superior Court of Washington for Mason County for all purposes. In any claim or lawsuit for damages arising from the parties' performance of this Agreement, each party shall pay all its legal costs and attorney's fees incurred in defending or bringing such claim or lawsuit, in addition to any other recovery or award provided by law; provided, however, nothing in this paragraph shall be construed to limit the MTA's right to indemnification under Section 7 of this Agreement.

13.3 Written Notice.

All communications regarding this Agreement shall be sent by prepaid certified U.S. mail, return receipt requested, or registered U.S. mail to the parties at the addresses listed on the signature page of the Agreement, unless notified to the contrary. Any written notice hereunder shall become effective three (3)

business days after the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated in this Agreement or such other address as may be hereafter specified in writing.

13.4 Assignment.

Any assignment of this Agreement by either party without the written consent of the non-assigning party shall be void. If the non-assigning party gives its consent to any assignment, the terms of this Agreement shall continue in full force and effect and no further assignment shall be made without additional written consent.

13.5 Modification.

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the MTA and Consultant.

13.6 Entire Agreement.

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the MTA, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner this Agreement. All of the above documents are hereby made a part of this Agreement. However, should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, the terms of this Agreement shall prevail.

13.7 Construction of Agreement.

In the event of a dispute between the parties as to the meaning of terms, phrases or specific provisions of this Agreement, the authorship of this Agreement shall not be cause for this Agreement to be construed against any party nor in favor of any party.

13.8 Compliance with Laws and Grants.

The Consultant agrees to comply with all federal, state, county, city and municipal laws, rules, and regulations that are now effective or in the future become applicable to Consultants business, equipment, and personnel engaged in work covered by this Agreement or accruing out of the performance of the work. ln addition, the Consultant, in performing services under this Agreement, shall comply with all terms and conditions of any applicable state or federal grants tied to the financing of the Project.

13.9 Other Provisions.

The Consultant shall be bound by the provisions set out in Exhibit "A" attached hereto and incorporated herein by this reference and agrees to fully and timely follow, perform and comply with the duties and obligations set out in said provisions.

The parties below execute this Agreement, which shall become effective on _____ 2012.

CONSULTANT:

By: _____

Date: _____

NOTICES TO BE SENT TO:
CONSULTANT:

MTA:

By: _____

Date: _____

NOTICES TO BE SENT TO:
MTA:
Brad Patterson, General Manager
Mason Transit
PO Box 1880
Shelton, WA 98584
bpatterson@masontransit.org
(360) 426-9434 ext. 107
(360) 426-9143 fax